IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5386 OF 2006

Mahendra Ashok Shewale .. Petitioner

Versus

Murlidhar Trymbak Shewale & Ors... Respondents

Mr.P.N.Joshi i/b.Kishor Patil for petiioner

Mr.N.R.Bubna for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2007

P.C.

. Special Civil Suit No.1 of 1990 is pending. Petitioner is original defendant therein. The order passed on 19th July 2006 by the second ad-hoc Additional Dist.Judge, Malegaon

in Civil Misc.Application No.49 of 2000 is under challenge. That order rejects the application preferred for condonation of delay.

2. The order challenged before the lower appellate court was directing the petitioner - defendant by mandatory order to remove the construction contemplated in Exh.1137. That order was passed on 3rd August 1999. This Court while issuing notice on the writ petition on 16th August 2006 directed that both sides should maintain status quo. Resultantly, the order of the trial court has not been implemented and executed.

3. Both sides agree that instead of matter being restored to the lower appellate court and the appeal being heard again on merits, it would be just, fair and proper if the order of status quo passed on 16th August 2006 is continued till the hearing and final disposal of the suit and

Special Civil Suit No.1 of 1990 is directed to be heard as expeditiously as possible.

4. Accordingly, petition is allowed. Impugned order is set aside. However, lower appellate court need not restore the appeal and hear it on merits, inasmuch as, the order of status quo granted by this Court shall continue as an interim order in the pending civil suit and the same is directed to be heard and disposed of within six months from today. All contentions on merits are expressly kept open and the court below need not be influenced by the continuation of the order passed on 16th August 2006.

(S.C.Dharmadhikari, J)